of security for the repayment of the loan to Orient which wholly owns Melbourne and Keras and that the latter two companies are accordingly to all intents and purposes mortgagees of the two ships. Mackay in his affidavit refutes this allegation as completely untrue and demonstrates the confusion and total lack of comprehension on the part of Yeo in respect of the legalities of the transaction between Melbourne and Keras on the one hand and Lord. He shows quite clearly that Yeo was well aware of the transaction entered into and the documents evidencing the sale by Lord to Melbourne and Keras and the bareboat lease effected and indeed Yeo signed as a guarantor for the lease agreements.

Mackay makes a pertinent point when he states that if Orient were the mortgagee of the ships it would have needed to record such mortgages in Panama to protect its security as under Panamanian law there is no concept equivalent to an equitable mortgage as exists in English law and the holder of an unregistered mortgage of a Panamanian vessel would not have a valid and enforceable mortgage at all under the law of the flag of the vessel. If Orient had intended that the finance provided by it should be secured by way of mortgage it would have proceeded on that basis and obtained a mortgage on each ship in its favour but it chose however to adopt the normal method of financing employed by it of acquiring registered and beneficial ownership of the ships in the name of its wholly-owned Panamanian subsidiary corporations and bareboat leasing them to Lord. It is of some considerable significance that Orient's security consequently lay in having title to the ships and that it did not have the security of a mortgage and the priority afforded as a result as against other claims which the ships might attract in the process of trading.

In the light of the several matters we have discussed we allowed this appeal with costs here and in the court below after hearing argument, set aside the order of the learned judge and made an order setting aside the writ, the warrant of arrest and the arrest of the "Loon Chong" and all subsequent proceedings in the action and for the guarantee dated April 30, 1979 given by the United Malayan Banking Corporation in the sum of $150,000 to be forthwith returned to the appellants for cancellation and directed the deposit lodged in court by way of security to be refunded to the appellants.

Appeal allowed.

Solicitors: *K.S. Choo & Co.; Chang & Vello.*

TAIPING OIL INDUSTRIES SDN. BHD. v. NATIONAL UNION OF PLANTATION WORKERS & ANOR.

[O.C.J. (Hashim Yeop A. Sani J.) August 20, 1981]
[Kuala Lumpur — Originating Motion No. A 12 of 1979]

Industrial Relations — Scope of s. 27(1) & (2) of the Industrial Relations Act, 1967.

Jurisdiction — Whether Industrial Court had exceeded its jurisdiction in questioning the locus standi of a person — Scope of s. 27(1) & (2) of Industrial Relations Act, 1967.

The applicants sought for an order of certiorari to quash the decision of the Industrial Court of April 3, 1979. In the award it was set out that at the commencement of the hearing of the reference under section 26(2) of the Industrial Relations Act 1967, the Industrial Court found it necessary to hear further evidence to establish the nature of the employment of one Gomez with the company after objection was raised by the other party on the *locus standi* of the said Gomez. At the end of the hearing on this point the Industrial Court came to the conclusion that Gomez was not a *bona fide* and permanent employee of the applicant company and therefore had no *locus standi* in these proceedings. This was the decision sought to be challenged.

The main issue before the court was whether the Industrial Court had exceeded its jurisdiction in questioning the *locus standi* of Gomez.

Held, dismissing the applications: (1) the question whether any person has *locus standi* before any court is a question of procedure for that court. The Industrial Court could not be said to be acting outside or in excess of jurisdiction when it wanted to satisfy itself as to the *capacity* of Gomez to appear before it;

(2) in a proceeding of this nature the court is not required to go into the merits of the award and the duty of the court is only to find if the decision challenged was made without or in excess of jurisdiction. Certiorari will not issue as a cloak of appeal in disguise.

Cases referred to:-

(1) *Printers (Mysore) Pte. Ltd.* v. *Labour Court Bangalore & Ors.* A.I.R. 1960 Mysore 44.

(2) *R.* v. *Northumberland Compensation Appeal Tribunal* [1951] 1 All E.R. 268.

ORIGINATING MOTION.

K. Chandran for the applicant.

D.P. Xavier for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: The applicant is asking for an order of *certiorari* to quash the decision of the Industrial Court handed down on April 3, 1979 contained in award (Exhibit P8) attached to the affidavit supporting the motion. In the award it is clearly set out that at the commencement of the hearing of the reference under section 26(2) of the Industrial Relations Act, 1967 the Industrial Court found it necessary to hear further evidence to establish the nature of the employment of Encik Gomez with the applicant company after objection was raised by the other party on the *locus standi* of Encik Gomez. At the end of the hearing on this point the Industrial Court came to the conclusion that Encik Gomez was not a *bona fide* and permanent employee of the applicant company and therefore had no *locus standi* in these proceedings. This was the decision sought to be challenged.

The applicant gave six grounds on which relief is sought. In my view all the grounds relate primarily to the merits of the case except ground 3 which stated

that the "Industrial Court exceeded its jurisdiction in questioning the *locus standi* of Encik A.B. Gomez". This ground raises the question of jurisdiction.

But first, who can represent a party under section 27 of the Industrial Relations Act before its repeal and substitution by Act A484 with effect from May 30, 1980? Section 27 then read as follows: —

"27(1) A party to any trade dispute may be represented, at the proceedings before the court, by any official of a trade union, or of such organisation of employers or workmen in Malaysia as may be approved by the Minister or, with the permission of the President, by a legal practitioner.

(2) A party to any reference to the court, under section 20(3), may be represented, at the proceedings before the court, by any official of a trade union, or of such organisation of employers or workmen in Malaysia as may be approved by the Minister or, with the permission of the President, by a legal practitioner."

The arguments of both counsel on this point may be restated briefly as follows. Because of the word "may" appearing in section 27(1) it was submitted on behalf of the applicant that it did not preclude others (i.e. other than the three categories of people specified in the subsection) to represent the party. The first respondent, however, argued that the word "may" only connoted that there was an option or an alternative for the party before the Industrial Court to appear *either* in person or through one of their representatives. But if it decided to hear and represent the case through a representative then such a representative must be confined to one of the three categories described in that subsection. It follows therefore from this argument that all those falling outside the three categories would have no *locus standi*. According to the respondent Encik Gomez was such a case.

Let us analyse section 27(1). In my view what it says is simply that a party to any trade dispute may be represented before the Industrial Court by — (a) any official of a trade union; or (b) any official of such organisation of employers or workmen in Malaysia as may be approved by the Minister; or (c) with the permission of the President, a legal practitioner. My reading of that subsection is that it is a *restrictive* provision for by its very language the type of people who can represent a party to a trade dispute in the Industrial Court is specified. It can be seen that in categories (a) and (b) only an "*official*" can represent a party. The word "official" connoted the person concerned held an office, a duty or a position. However this category of officials is not exhaustive in so far as the question of right of representation is concerned. In category (c) it is not every legal practitioner who can appear as of right but only those with *permission* of the President.

Counsel for the applicant relies heavily on the corresponding Indian provision that is section 36 of the Indian Industrial Disputes Act, 1947. In *Printers (Mysore) Private Ltd.* v. *Labour Court Bangalore & Ors.*[1] the Division Bench of the Mysore High Court held that that provision is not exhaustive but is only permissive, considering that subsection (1) and (2) of that section speak respectively of a workman and an employer being "entitled to be represented". The argument in the Indian Courts were apparently that when the law lays down that a workman or an employer would be "entitled to be represented" in a particular manner it would be difficult to hold that the right of the workman or employer to be represented in a proceeding must be restricted to that manner only.

But in my view our section 27 is differently phrased and should therefore be looked at and construed within the four corners of our Act. Before the amendment by Act A484 the word "party" was defined with reference to a trade dispute to include a trade union of employers representing an employer who is a party to the dispute or a trade union of workmen representing workmen who are parties to a dispute. It would seem to me that the ambit of both section 27(1) and definition of the word "party" was extended by the amendment made by Act A484. For all these reasons I am of the view that section 27(1) of the Industrial Relations Act as then worded was restrictive and not permissive.

That leads us to the next question whether the Industrial Court was acting without or in excess of jurisdiction when it entertained the question of *locus standi* of Encik Gomez at the commencement of the proceeding. In my opinion the question whether any person has *locus standi* before any court is a question of procedure for that court. The Industrial Court cannot be said to be acting outside or in excess of jurisdiction when it wanted to satisfy itself as to the *capacity* of Encik Gomez to appear before it. I am not prepared to say that by doing so the Industrial Court had "travelled outside the reference" and therefore had proceeded to adjudicate on matters not referred to it. As clearly shown in the award it was a preliminary question and the ruling was a ruling made upon a preliminary objection.

In India section 36 of the Indian Trade Disputes Act, 1947 has been held to lay down rules of procedure only and non-compliance with the provisions of that section may amount to irregularity but it cannot vitiate the proceedings or award. — See Industrial Disputes Act, 1947 (India) page 73.

Section 28 of our Industrial Relations Act provides that the President of the Industrial Court may regulate the procedure and proceedings of the court *as he thinks fit* and with the approval of the Minister may make rules governing such procedure and proceedings. Section 29 of the Act confers powers on the Industrial Court to act in *matters relating to procedure* and paragraph (g) of section 29 provides that the Industrial Court may in relation to a trade dispute before it "*generally direct and do all such things as are necessary or expedient* for the expeditious determination of the trade dispute or the reference to it under section 20(3)." These are clear indications, to my mind, that the question of *locus standi* of a person is a matter of procedure and perfectly within the competence of the Industrial Court to determine at any stage of the proceeding and its decision on such matters cannot be said to be a decision made without or in excess of jurisdiction.

Finally, the applicant also complained that the Industrial Court had violated the rules of natural justice in that it came to its conclusion on its own

volition, and in the absence of the parties when it considered the preliminary ruling in Industrial Court Case No. 148 of 1977 in which the same A.B. Gomez was involved. I do not think this allegation is correct at all as it is clearly set out in the award (Exhibit P8) that the Industrial Court came to its decision after examining the various documents submitted by Encik Gomez himself. In coming to its conclusion the Industrial Court also took note of the observations of the presiding Chairman in the Industrial Court Case No. 148 of 1977. Since the preliminary ruling in Industrial Court Case No. 148 of 1977 was a public document and was related to the same question the Industrial Court in this case was perfectly entitled to look at it.

The Industrial Court has made its finding and it is trite law now that where the Industrial Court has decided on a question and while doing so it has not committed any errors affecting jurisdiction it was as much entitled to decide that question wrongly as it was to decide it rightly. In proceedings of this nature therefore the court is not required to go into the merits of the award and the duty of the court is only to find if the decision challenged was made without or in excess of jurisdiction. — See *Rex* v. *Northumberland Compensation Appeal Tribunal.*(2) *Certiorari* will not issue as a cloak of appeal in disguise.

The application is therefore dismissed with costs.

Application dismissed.

Solicitors: *K. Chandran & Co.; D.P. Xavier.*

LIAN KEOW SDN. BHD. v. C. PARAMJOTHY & ANOR.

[O.C.J. (Yusof Abdul Rashid J.) August 24, 1981]
[Johore Bahru — Civil Suit No. 270 of 1981]

Practice and Procedure — Anton Piller Order — Action for declaration that plaintiffs were beneficial owners of land and that defendant was holding land in trust for the plaintiffs — Application ex parte to authorise plaintiffs to enter premises of defendant and to take into custody documents which were essential evidence in action allowed.

In this case the plaintiffs sought a declaration that they were beneficial owners of a piece of land in Johore Bahru and that the first defendant was holding the said land in trust for the benefit of the plaintiffs. The plaintiffs applied *ex parte* for an *"Anton Piller"* order to authorise the plaintiff's representatives to enter the premises of the first defendant and to take into custody those documents which were essential evidence in the action.

Held, allowing the plaintiffs' application: in this case as the plaintiffs had proved a strong *prima facie* case against the first defendant that he held the said land in trust for the plaintiffs, that there was a serious danger of the first defendant destroying the trust deed and files relating to the said land and that the first defendant was in possession of such trust deed and files, the court would issue the order applied for.

[Editorial Note: See article "The 'Anton Piller' Order" [1982] 1 M.L.J. vi.]

Cases referred to:-

(1) *Anton Piller Kg.* v. *Manufacturing Processes Ltd. & Ors.* [1976] 2 W.L.R. 162.

(2) *Yousif* v. *Salama* [1980] 3 All E.R. 405.

(3) *Rank Film Distributors Ltd. & Ors.* v. *Video Information Centre & Ors.* [1981] 2 W.L.R. 668; [1981] 2 All E.R. 76.

CIVIL SUIT.

T. Thomas for the plaintiffs.

Yusof Abdul Rashid J.: The plaintiffs through the Official Receiver of Malaysia who has been appointed by the court as liquidator of the plaintiffs which are in the process of being wound-up, filed a writ seeking, *inter alia,* for a declaration that they are the beneficial owners of a piece of land held under Grant 6705 Lot 2084 in the Mukim of Tebrau in the District of Johore Bahru (the "said land") and that the first defendant is holding the said land in trust for the benefit of the plaintiffs. To prevent the destruction of the Trust Deed and the relevant files relating to the purchase of the said land from the former proprietors thereof, the plaintiffs applied to court for the custody of all those documents relevant to the action instituted in court which were believed to be in the custody of the first defendant. However, such application could not possibly be made *inter partes* for fear that the first defendant might destroy or conceal them to defeat the ends of justice. As such, the plaintiffs applied *ex parte* for an *"Anton Piller"* order to authorise the plaintiffs' representatives to enter the premises of the first defendant and to take into custody those documents which are essential evidence in the action.

The application was supported by an affidavit deposed by the Official Receiver Malaysia wherein it was disclosed that the first defendant had admitted to one, P.C. Dowson, the Assistant Registrar General in the Official Receiver's Office in Hong Kong that though he (the first defendant) was the registered proprietor of the said land, he was in fact holding it in trust for an unidentified company in the Mosbert Group of which the plaintiffs were one of them. From the plaintiffs' records it was disclosed that the plaintiffs were the beneficial owners of the said land though the first defendant was the registered proprietor thereof. The first defendant had affirmed in an affidavit, attached to the supporting affidavit of the Official Receiver Malaysia, that he was the registered proprietor of certain other pieces of land in the Mukim of Pulai Johore Bahru but in fact he was holding them in trust for other companies in the Mosbert Group. Exhibited to the supporting affidavit was a letter written by the first respondent to one, Ng Kong Yeam, admitting that he was holding the said land in trust. It was also admitted that a Trust Deed was executed in relation to the said land.

It has come to my attention that in relation to the said land, the first defendant, in breach of the said trust, had entered into a Sale and Purchase Agreement with one Ng Kam Loon on January 26, 1980 purporting to sell the said land for $120,000 for which the first defendant had accepted a sum of $12,000 as deposit and part payment towards the purchase price of the said land. The sale could not be completed since the plaintiffs had entered a caveat against the said land to protect their interests therein. On record, it was revealed that the first defendant by an Originating Motion No. 15 of 1981 had applied to the Johore Bahru High Court for an order to have